**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN**

**THURSDAY, THE 26TH JULY 2007 / 4TH SRAVANA 1929**

**WP(C).No. 17706 of 2003(G)**

**PETITIONERS:**

1. **MERLY ZACHARIAH, LECTURER (SELECTION GRADE) DEPARTMENT OF ECONOMICS, B.K.COLLEGE, AMALAGIRI P.O., KOTTAYAM.**
2. **ROSAMMA JOSEPH, LECTURER (SELECTION GRADE), DEPARTMENT OF ECONOMICS, B.K.COLLEGE, AMALAGIRI P.O., KOTTAYAM**
3. **PHILOMINAMMA JACOB, LECTURER, (SENIOR GRADE) DEPARTMENT OF ECONOMICS, B.K.COLLEGE, AMALAGIRI P.O., KOTTAYAM.**

**BY ADV. SRI.BABU VARGHESE.**

**RESPONDENTS:**

1. **THE MANAGER, B.K.COLLEGE, AMALAGIRI P.O., KOTTAYAM.**
2. **MAHATMA GANDHI UNIVERSITY, REPRESENTED BY ITS REGISTRAR, PRIYADARSHINI HILLS P.O., KOTTAYAM.**
3. **STATE OF KERALA, REPRESENTED BY ITS PRINCIPAL SECRETARY, DEPARTMENT OF HIGHER EDUCATION, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM**
4. **THE DIRECTOR OF COLLEGIATE EDUCATION, VIKAS BHAVAN, P.M.G.JUNCTION, THIRUVANANTHAPURAM**

**W.P.(C). NO.17706/2003:**

**5. THE DEPUTY DIRECTOR OF COLLEGIATE EDUCATION, KOTTAYAM.**

**6. LEENA MATHEW, LECTURER, DEPARTMENT OF ECONOMICS, B.K.COLLEGE, AMALAGIRI.**

**7. BEENA GEORGE, LECTURER, DEPARTMENT OF ECONOMICS, B.K.COLLEGE, AMALAGIRI.**

**BY ADV. SRI.V.K.MUHAMMAD YOUSUF, SC, M.G.UTY.,**
**SRI.SABU GEORGE,**
**SMT.BEENA SUZANNE THOMAS,**
**SRI.JOMY GEORGE,**
**SRI. T.A. SHAJI, SC, M.G.UNIVERSITY**
**SRI.MOHAN PULIKKAL**
**SMT.MANJU RAJAN**
**SMT.A.AMRUTHA VIDYADHARAN**
**GOVERNMENT PLEADER SMT. SMITHA SUKUMARAN.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**ORDER ON I.A. NO. 3276/2003 IN W.P.(C). NO. 17706/2003**

**DISMISSED**

**26/07/2007.** **SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.**

**APPENDIX**

**PETITIONER'S EXHIBITS:**

**EXT.P.1: COPY OF THE G.O. DTD. 13/03/1990.**

**EXT.P.2: COPY OF THE G.O. DTD. 23/03/1990.**

**EXT.P.3: COPY OF THE G.O. DTD. 12/02/1996.**

**EXT.P.4.A: COPY OF THE REPRESENTATION FILED BY THE P.1. DTD. 18/09/2002 TO THE MANAGEMENT.**

**EXT.P.4.B: COPY OF THE REPRESENTATION FILED BY THE P.2. DTD. NIL. TO THE MANAGEMENT.**

**EXT.P.4.C: COPY OF THE REPRESENATION FILED BY THE P.3. DT. 18/09/2002 TO THE MANAGEMENT.**

**EXT.P.5: COPY OF THE APPROVAL DTD. 24/03/97 GRANTED TO THE R.6.**

**EXT.P.6: COPY OF THE ORDERS ISSUED BY THE R.5. IN FAVOUR OF THE R.6 DTD. 02/04/2003.**

**EXT.P.7: COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONERS BEFORE THE R.4. DTD. 19/05/2003.**

**EXT.P8(A): COPY OF THE STATEMENT OF WORK LOAD AS ON 01/09/96.**

**EXT.P8(B): COPY OF THE SENIORITY LIST OF TEACHERS IN THE DEPARTMENT OF ECONOMICS AS ON 17/09/1996.**

**EXT.P.9: COPY OF THE ORDER G.O. (MS). NO. 42/93/H.EDN. DTD. 06/04/1993.**

**EXT.P.10: COPY OF THE UNIVERSITY CIRCULAR FOR THE PLACEMENT OF TEACHERS DTD. 13/02/1991.**

**EXT.P.11: COPY OF THE PROCEEDINGS OF THE R.5. DTD. 17/07/2001 RECTIFYING THE ANOMALLY OF PAY FIXATION IN CMS COLLEGE, KOTTAYAM.**

**W.P.(C). NO.17706/2003:**

**EXT.P.12: COPY OF THE COUNTER AFFIDAVIT FILED IN O.P. NO. 19334/2000 DTD. 30/01/2001.**

**RESPONDENT'S EXHIBITS:**

**EXT.R1.A: COPY OF THE GOVERNMENT ORDER DTD. 03/04/2002.**

**EXT.R1.B: COPY OF THE REPRESENTATION DTD. 12/04/1996.**

**EXT.R1.C (SERIES): COPIES OF THEIR SERVICE RECORDS.**

**EXT.R1.D: COPY OF THE LETTER DTD. 08/11/2002.**

**EXT.R1.E (SERIES): COPY OF THE REPRESENTATION.**

**EXT.R1.F: COPY OF THE APPROVAL GRANTED BY THE UNIVERSITY.**

**EXT.R6.A: COPY OF THE ADVERTISEMENT IN THE INDIAN EXPRESS DTD. 16/01/1996.**

**EXT.R6.B: COPY OF THE APPOINTMENT LETTER DTD. 17/09/1996.**

**EXT.R6.C: COPY OF THE APPROVAL ORDER GRANTED BY THE UNIVERSITY DTD. 24/03/1997.**

**EXT.R6.D: COPY OF THE ORDER OF PROMOTION BY THE UNIVERSITY DTD. 30/01/2002.**

**EXT.R7.A: COPY OF THE ADVERTISEMENT IN INDIAN EXPRESS DTD. 16/01/1996.**

**EXT.R7.B: COPY OF THE APPROVAL ORDER GRANTED BY THE UNIVERSITY TO THE PETITIONER DTD. 24/03/97.**

**EXT.R7.(C): COPY OF THE GOVERNMENT ORDER DTD. 01/02/2002.**

**EXT.R7.(D): COPY OF THE LETTER WRITTEN BY DIRECTOR OF COLLEGIATE EDUCATION TO THE PRINCIPALS OF VARIOUS COLLEGES DTD. 18/07/2003.**

**//TRUE COPY//**

**P.A. TO JUDGE**

**prv.**

**Thottathil B. Radhakrishnan, J.**

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W.P.(C)No.17706 of 2003

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Dated this the 26th day of July, 2007.

**JUDGMENT**

The three writ petitioners and respondents 6 and 7 are teachers in the Department of Economics in the B.K.College, Amalagiri, Kottayam. By Ext.P2 Government Order, G.O.(MS)No.76/90/H.Edn. dated 23-3-1990, the Government issued orders extending the benefits to college teachers at pre-degree level, who are not covered by the U.G.C.Scheme. In terms thereof, the college teachers will be bifurcated as 52% coming under the UGC Scheme and 48% not coming the UGC Scheme. The said Government Order provides such bifurcation of the teachers, who were in service on the basis of that Government Order. The benefits were to be available only to those who are appointed on regular basis against permanent vacancies. There are various other conditions also in Ext.P2, which are not being immediately referred

to in the nature of the orders being issued hereunder. However, it has to be noticed that the vacancies occurring after the issuance of that Government Order have to be filled in the manner prescribed in Clause 2(iii) and other relevant provisions of that Government Order.

2. Petitioners contend that though they entered regular service only on 4-7-1988, 14-7-1993 and 10-11-1995 respectively, they had prior service against leave vacancy, which according to them, are eligible to be treated as permanent vacancies. I am just mentioning that contention, without expressing anything on merits.

3. According to the petitioners, the recruitment of respondents 6 and 7 could not have been made as against the 25% vacancies but those vacancies ought to have been filled from those who

come under the 48% referred to in Clause 2(ii) of Ext.P2 Government Order. This contention is raised on the premise that the petitioners belong to that 48%, which entitlement claimed by the petitioners, is disputed by the Manager as also respondents 6 and 7.

4. A counter affidavit is placed on record by the University which has issued Ext.P5 approval of appointments of respondents 6 and 7. The University essentially contends that the placement under UGC scale is a matter for the Deputy Director or the Director of Collegiate Education to consider and the University is not involved in that matter. It is the stand of the University that its authority extends only to the extent of approving the appointments made by the Manager and thereafter the involvement of the University is not there. Though the counter affidavit on behalf of the

Deputy Director refers to various Government Orders issued regarding the applicability of the UGC Scheme, the Government stands by the decision of this Court in **Joseph Kachappilly v. State of Kerala (1997 (2) K.L.T. 740)** whereby this Court held that the Government have no power to constitute any Screening Committee for selecting persons entitled to be brought into the UGC Scales.

5. The basic complaint of the petitioners is that they were entitled to be identified as available within the 48% of teachers available on the date of Ext.P2 Government order and therefore, the recruitment in dispute that is the one in which respondents 6 and 7 have been appointed ought to have been made from among the 48% in-service candidates. Resolution of this dispute would first call for a decision as to whether the petitioners were entitled to be treated as appointed on a

regular basis against permanent vacancies and available in the service of the college as on the date of Ext.P2 Government Order. If they were so available, the next question would be whether they were entitled to be appointed as against 75% quota by treating them available among the 48% following the acquisition in Clause 2(i)&(ii) of Ext.P2 Government Order. In deciding the issues raised by the petitioners, it has also to be further considered whether the vacancies for which advertisements were issued to the Manager resulting in the recruitment of respondents 6 and 7 were vacancies to be ear-marked against the 75% quota for recruitment from the 48% or available for recruitment by direct recruitment, that is, the 25% quota governed by Clause 2(iii)(a) of Ext.P2 Government Order. If the petitioners were available as against the 48% bifurcated group and thus available for recruitment to 75% of the

vacancies, their entitlement will depend upon whether the vacancies which were filled up by the appointment of respondents 6 and 7 were appointments as against that quota.

6. The availability of a vacancy is the first issue to be considered for the purpose of any statutory authority to approve an appointment. This is because, the availability of the vacancy is the situation which triggers the process of recruitment. Therefore, the availability of a particular vacancy, the identity of the vacancy, including the quota to which the vacancy may relate, are matters which an authority empowered to make an appointment has to take into consideration while approving an appointment. Going by the laws relating to the Universities, there is no doubt that the power to approve an appointment is with the University. This is how the direct payment

scheme has also been understood in the context of aided colleges in the State of Kerala. If that were so, while exercising the power of approving an appointment, the University authorities have to first reach at a conclusion for recruitment in a particular manner. This essentially, in the case in hand, would involve the consideration as to whether the vacancies in question fell under the 25% quota for direct recruitment or under the 75% quota towards which appointments have to be made among the 48%. Therefore, the University cannot fight shy to carry out its statutory responsibilities to decide such issue and cannot stand as a silent spectator to merely state that it is concerned only with the approval of appointment with reference to qualification and the question of placement in the UGC scale does not fall within its consideration. I say so because the plea of the University in its counter affidavit is nothing but

one by which it takes the stand that it has virtually no control over the placement in the UGC Scale in terms of Clause 2(iii) thereof.

7. Any decision of the Deputy Director for release of the amounts in terms of UGC Scale to respondents 6 and 7 or to any other incumbent would also depend upon the decision to be taken by the University in relation to appointment. Ext.P6 issued by the Deputy Director would not, therefore, finally resolve the issues. It has also to be at once noticed that the conferment of UGC Scales to respondents 6 and 7 as per Ext.P6 is with retrospective effect and in a manner taking away the rights of the petitioners.

8. On behalf of respondents 6 and 7, it has been pointed out that their entitlement for appointment, placement and scales do not depend

upon any claim of the petitioners for appointment and therefore there is no meaning in the petitioners seeking directions to either remove respondents 6 and 7 from service or to take away any benefit that has been conferred on them.

9. Having regard to what is aforesaid, this writ petition is disposed of issuing the following directions:

> (1) The competent authority in the University, enjoined to approve the appointments shall give an opportunity of hearing to the petitioners, the Manager and respondents 6 and 7 and decide as to the identity of the vacancies to which recruitment has been made. In deciding whether those vacancies were available for direct

recruitment, such authority shall decide as to whether such vacancy fell within the 25% or the 75% quota.

(2) If it is found that such vacancy falls within the 75% quota, the entitlement of the petitioners to claim such vacancies should also be considered in accordance with law and including the terms of Ext.P2.

(3) The question of approval of the appointment of respondents 6 and 7 and the claim of the petitioners will thus be decided by the University authority and the impugned decisions will stand regulated and if necessary, modified in accordance with the decision that the University may render as directed

above.

(4) It would also be open to respondents 6 and 7 to contend that the petitioners are really not entitled to any further benefit than is already granted to them.

(5) All other issues are left open. A final decision, as aforedirected, shall be taken within a period of four months from the date of receipt of a copy of this judgment.

**Thottathil B.Radhakrishnan,**
**Judge.**

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**Thottathil B. Radhakrishnan, J.**

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W.P.(C)No.17706 of 2003

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**JUDGMENT**

**Dated:26-7-2007**